STATE OF LOUISIANA	*	**NO. 2017-KA-0366**
VERSUS	*	
		COURT OF APPEAL
ARDULRAUMAN ZEITOUN	*	
		FOURTH CIRCUIT
	*	
		STATE OF LOUISIANA

* * * * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 520-742, SECTION "E"
Honorable Keva M. Landrum-Johnson, Judge
* * * * * *
Judge Joy Cossich Lobrano
* * * * * *

(Court composed of Judge Roland L. Belsome, Judge Joy Cossich Lobrano, Judge Marion F. Edwards, Pro Tempore)

Leon A. Cannizzaro, Jr.
DISTRICT ATTORNEY
ORLEANS PARISH
Donna Andrieu
Assistant District Attorney
Christopher J. Ponoroff
Assistant District Attorney
619 South White Street
New Orleans, LA 70119

COUNSEL FOR APPELLEE/STATE OF LOUISIANA

Martin E. Regan, Jr.
Graham DaPonte
REGAN LAW, PLC
2125 St. Charles Avenue
New Orleans, LA 70130

COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED
November 8, 2017

Appellant Ardulrauman Zeitoun ("Defendant") seeks review of his conviction for stalking a person for whose benefit a protective order has been issued and his sentence of four years at hard labor in the custody of the Louisiana Department of Corrections. For the reasons that follow, we affirm Defendant's conviction and sentence.

The victim, K.Z.[1], met Defendant in 1994. They were married that same year, and had four children together. After a March 2011 incident where Defendant was arrested for beating her, K.Z. eventually decided to divorce Defendant. Upon telling Defendant of her decision, Defendant said to K.Z., "[d]rop this [explicative] or I'll finish your life." K.Z. continued with the divorce, and the divorce was finalized on February 8, 2012.

As part of the property settlement after the divorce, K.Z. became responsible for managing the former couple's rental properties and was awarded ten percent of the rental income. The upkeep on the properties was a time-consuming responsibility, so K.Z. was frequently present at one of the properties. The property settlement also allowed Defendant to live in the property that had been the primary

[1] Pursuant to La. R.S. 46:1844(w), initials are used to protect the identity and provide for the safety and welfare of the victims.

residence during the marriage (the "Residence") on the condition that he paid the mortgage and the utility bills. Defendant failed to do so, and he vacated the Residence. Eventually, K.Z. moved into the Residence.

Various incidents occurred after Defendant moved out of the Residence. First, a July 25, 2012 incident resulted in Defendant being charged with attempted first degree murder. *See* La. R.S. 14:(27)30.[2] K.Z. testified that she and Defendant had a closing at a law office that they were scheduled to attend at different times. After completing her business, K.Z. left the law office and proceeded to her car. As she attempted to pull out of the parking space, Defendant pulled his van up beside her vehicle, which prevented her from leaving or opening her door. Defendant exited the van with a tire iron and began striking K.Z.'s vehicle and her windshield, causing it to break. K.Z. managed to slide over to the passenger side, unlock the door, and run down the street. Defendant chased after her and struck her with a tire iron. She fell to the ground, and Defendant dropped the tire iron. His hands now free, Defendant grabbed K.Z. by the head and began beating her in the head and back. Then, Defendant started to strangle her. K.Z. stated that he tried to break her neck, and that Defendant intended to kill her. A bystander was able to get Defendant off of her in time. K.Z. was certain that she would have died had someone not intervened. She was suffocating.

The second incident took place on April 30, 2014, when Defendant violated a protective order. On October 2, 2012, a protective order (the "Order") was entered by a judge in Civil District Court. The terms of the Order barred Defendant

[2] Defendant was also charged with soliciting another person to murder the victim in a separate incident. *See* La. R.S. 14:(27)28.1. These two charges were tried together. On July 30, 2013, after a judge trial, Defendant was found not guilty of attempted first degree murder with respect

from coming within 100 yards of K.Z. or contacting her by any means. The Order also required that Defendant stay at least 100 yards away from the rental properties managed by K.Z.[3] Despite the Order, Defendant returned to the rental properties managed by K.Z. On April 30, 2014, Defendant drove by one of the rental properties in a white cargo van while K.Z. was there with her daughter, N.Z. N.Z. was watering the front lawn when Defendant drove past and waved at her once, slowly. Officer Samuel Jennings ("Officer Jennings") responded to the incident. After hearing K.Z. and N.Z.'s statements, and learning of the Order, he prepared an arrest warrant for Defendant.[4] Defendant was arrested for violation of protective orders. *See* La. R.S. 14:79.

Less than a month later, on May 16, 2014, a third incident occurred between K.Z. and Defendant. K.Z. was at another one of the rental properties doing some painting with her children. After Defendant's release from custody she began carrying a handgun, for which she has a permit. However, while she was painting, she put the gun down. At one point she had to go out to her vehicle to retrieve something. The white cargo van Defendant had previously driven by the Residence in was parked in front of the property, ten or fifteen feet away. As she exited the gate, she looked up and saw Defendant's van blocking her in, as it had been before, on the day of the tire iron attack. Defendant was in the van. K.Z. immediately thought he was going to attack her again. She reached for her gun only to realize

---

to the July 25, 2012 incident, and found not guilty of soliciting another person to murder the victim.

[3] The Order originally stated that Defendant lived at the Residence. However, on September 24, 2014, the Order was amended to order Defendant to stay away from the Residence, as Defendant was no longer living there.

[4] The State introduced this arrest warrant as an exhibit at trial.

she had left it inside. K.Z. panicked, started screaming, and ran back inside. Her children came outside, and Defendant drove off slowly. K.Z. contacted the police, and Defendant was ultimately arrested for violation of protective orders. *See* La. R.S. 14:79. On June 25, 2014, as a condition of reducing Defendant's post-indictment bond, Defendant was again prohibited from contacting K.Z. or going to the Residence.

Less than two weeks later, on August 6, 2014, a fourth incident occurred when Defendant contacted K.Z. by phone. K.Z. captured a screenshot of the call, and recorded part of the conversation.[5] During the call, Defendant attempted to set up a meeting with K.Z., despite the Order, regarding transferring some property. K.Z. insisted that Defendant contact her attorney to perfect any transactions stating, "[y]ou have to meet with my attorney, not me." K.Z. then contacted her attorney and the prosecutor to report Defendant's phone call. Despite K.Z.'s attempts to keep Defendant from contacting her, at 6:24 a.m. the next morning, Defendant called her again. She did not answer.[6]

In September and October of 2014, three more incidents occurred between K.Z. and Defendant. At this time, K.Z.'s children, including N.Z., and their roommates were living at the Residence. On September 16, 2014, K.Z. received a call from N.Z., who informed her that Defendant was at the Residence. N.Z. had been sleeping when she heard the dog barking in the backyard. She looked out the window and saw Defendant walking in the yard with a ladder, attempting to ward

---

[5] Both the screenshot and the recorded portion of the conversation were introduced by the State as evidence against Defendant at Defendant's trial.

[6] The State introduced a screen shot from K.Z.'s phone of the call as evidence against Defendant at trial.

the dog off. N.Z. got one of her roommates to escort her out of the house and the two drove away. K.Z. panicked and called 911. Defendant was subsequently arrested for violation of protective orders. *See* La. R.S. 14:79. Following Defendant's arrest, the district court again admonished Defendant that he was to have absolutely no contact with K.Z. or with the children.

Less than a week later, on September 22, 2014, K.Z. received another phone call from N.Z. telling her that Defendant was at the Residence. Once again, N.Z. heard the dog barking. Then, when she neared the main room of the house where her roommates were located, she heard Defendant's voice. When he saw her, he stated, "You come here." At that point, N.Z. ran to a neighbor's house and called the police. K.Z. also contacted the police,[7] and Defendant was subsequently arrested for violation of protective orders. *See* La. R.S. 14:79.[8] The district court once again explicitly ordered Defendant to have no further contact with K.Z. or her children. Despite this order, Defendant called K.Z. just twelve days later, on October 4, 2014. K.Z. felt that this call was an attempt by Defendant to let her know that that he was still there, and that he was not going anywhere.

All of these incidents affected the rental business. A tenant who used to live at one of K.Z.'s rental properties near the Residence testified that she moved out in April of 2014 because she was afraid that something might happen at the rental property when she was at home, or when her children were there alone after school. K.Z. advised the tenant to Google her prior to moving into the property. At

[7] A recording of the 911 call she placed was played during Defendant's trial.

[8] It was after this incident that K.Z. went back to the Civil District Court and had the Order amended to specifically include the Residence. *See supra* fn. 1.

first, the tenant thought that it would be safe because Defendant was in jail. However, Defendant's behavior upon his release altered her opinion.

During one incident, Defendant released two goats into the tenant's backyard. Later, on January 26, 2014, Defendant randomly cut down a tree in the tenant's front yard. The tenant also spotted Defendant hiding out in the apartment next door, one of the rental properties Defendant was prohibited from accessing by the Order. She found it strange that Defendant was in the apartment despite the fact that it had no electrical service.

The tenant was forced to call the police four or five times during the time she resided at the rental property. Officer Charles Augustus ("Officer Augustus") interviewed the tenant after one of the times that she saw Defendant in the apartment next door. After his interview with the tenant, Officer Augustus prepared a warrant for Defendant's arrest. Another warrant for Defendant's arrest was generated as a result of the tree-felling incident.[9]

On June 23, 2014, Defendant was indicted for felony stalking in violation of a protective order between January 26, 2014 and May 16, 2014. The indictment also alleged that Defendant placed the victim in reasonable fear of death or bodily injury, in violation of La. R.S. 14:40.2(B)(2)(a). Defendant was arraigned on June 25, 2014, and entered a plea of not guilty. The bill of indictment was eventually amended to extend the period of alleged stalking to January 26, 2014 through October 4, 2014.

On December 16, 2014, the State filed a notice of intent pursuant to Louisiana Code of Evidence article 404(B) to introduce evidence of Defendant's

[9] The State introduced copies of both of these arrest warrants as exhibits at trial.

prior bad acts. Defendant filed his opposition to the State's notice on March 13, 2015. A contradictory hearing was held on March 26, 2015. The district court granted in part and denied in part the State's motion, but agreed to reconsider its ruling after post-hearing briefing. On May 5, 2015, the district court denied the State's motion for reconsideration, and affirmed its original ruling. The State sought supervisory review of the district court's ruling. This Court granted the writ and reversed the district court's ruling as to, among other things, the admissibility of the tire iron attack. *State v. Zeitoun*, unpub., 2015-0580 (La. App. 4 Cir. 6/1/15), *writ denied*, 2015-1285 (La. 9/25/15), 178 So.3d 571.

On June 6, 2016, Defendant proceeded to trial. After a one-day bench trial, the district court found Defendant guilty as charged. On October 21, 2016, Defendant filed a motion for new trial. He then filed amended motions for new trial on November 2 and 15, 2016. The district court denied the motion for new trial on November 21, 2016. That same day, the district court sentenced Defendant to serve four years in the Louisiana Department of Corrections, finding that the elements necessary to trigger the sentencing enhancement for placing the victim, for whom a protective order had been issued, in reasonable fear of death or bodily injury had been proven beyond a reasonable doubt. Defendant objected to the sentence, but did not file a motion to reconsider sentence.

This appeal timely follows.

Errors Patent

Louisiana Code of Criminal Procedure article 920 directs appellate courts to consider errors discoverable by an inspection of the pleadings and proceedings. *State v. Thomas,* 2012-0177, p.6 (La. App. 1 Cir. 12/28/12), 112 So.3d 875, 878. A review of the record reveals that Defendant was not arraigned on the amended bill

of indictment. However, failure to arraign a defendant is harmless if the defendant goes to trial without objecting to the failure. La. C.Cr.P. art. 555. In the case *sub judice*, Defendant failed to object to not being arraigned on the amended bill of indictment, and has not raised the failure to arraign as an assignment of error on appeal. Accordingly, any error in the omission is harmless. *See State v. Brown,* 620 So.2d 508, 511-12 (La. App. 4th Cir. 1993) (finding that the failure to arraign the defendant was patent error but was harmless where defendant never objected to the lack of arraignment and did not urge it as grounds for reversal on appeal). There are no other patent errors.

Assignments of Error

Defendant assigns errors relating to both his trial and his sentence. As to his trial, Defendant argues that the evidence was insufficient to support his conviction and that other crimes evidence was introduced against him erroneously. "When issues are raised on appeal as to the sufficiency of the evidence and as to one or more trial errors, we [the reviewing court] first determine the sufficiency of the evidence." *State v. George*, 2015-1189, p. 9 (La. App. 4 Cir. 11/9/16), 204 So.3d 704, 711, (quoting *State v. Marcantel*, 2000-1629, p. 8 (La. 4/3/02), 815 So.2d 50, 55).

When reviewing the sufficiency of the evidence to support a conviction, this Court is controlled by the standard set forth by the United States Supreme Court in *Jackson v. Virginia*. 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *see also State v. Captville*, 448 So.2d 676, 678 (La. 1984) (recognizing that Louisiana courts are bound by the standard articulated in *Jackson v. Virginia*). *See also State v. Marshall,* 2004-3139, p. 7 (La. 11/29/06), 943 So.2d 362, 367 (applying the

Jackson standard to review of verdicts in judge trials). The Louisiana Supreme Court explains the *Jackson* standard as follows:

> Under this standard, an appellate court "must determine that the evidence, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt." *Tate*, 851 So.2d at 928. In applying this standard, a reviewing court is not permitted to second guess the rational credibility determinations of the fact finder at trial, nor is a reviewing court required to consider the rationality of the thought processes employed by a particular fact finder in reaching a verdict. *State v. Marshall*, 04–3139 (La. 11/29/06), 943 So.2d 362, 367. It is not the function of an appellate court to assess credibility or reweigh the evidence. *State v. Stowe*, 635 So.2d 168, 171 (La. 1994).

State v. Kelly, 2015-0484, pp. 3-4 (La. 6/29/16), 195 So.3d 449, 451; *see also State v. Chambers*, 2016-0712, pp. 6-7 (La. App. 4 Cir. 2/15/17), 212 So.3d 643, 648 (applying this articulation of the *Jackson* standard in a case before this Court). Accordingly, where rational triers of fact could disagree as to the interpretation of the evidence, the view of all evidence in the light most favorable to the prosecution must be adopted on review. *See State v. McGhee,* 2015-2140, p. 2 (La. 6/29/17), 223 So.3d 1136, 1137 (La. 2017) (citing *State v. Mussall*, 523 So.2d 1305, 1310 (La. 1988)).

Defendant first argues that the evidence was insufficient to prove the crime of stalking as defined by La. R.S. 14:40.2(A). Stalking is defined as follows:

> Stalking is the intentional and repeated following or harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress. Stalking shall include but not be limited to the intentional and repeated uninvited presence of the perpetrator at another person's home, workplace, school, or any place which would cause a reasonable person to be alarmed, or to suffer emotional distress as a result of verbal, written, or behaviorally implied threats of death, bodily injury, sexual assault, kidnapping, or any other statutory criminal act to himself or any member of his family or any person with whom he is acquainted.

La. R.S. 14:40.2(A).[10]

Defendant argues that because several of the alleged stalking incidents consisted of him simply being present at the Residence, at the adjacent rental property, or on a public street, these incidents cannot qualify as "harassing" under La. R.S. 14:40.2(A). He further argues that after excluding these incidents, the remaining incidents taken together are insufficient to establish the element of an "intentional and repeated uninvited presence of the perpetrator." *Id.*

Although Defendant argued that he had the right to be present at the Residence throughout the trial, the evidence presented contradicts that argument. K.Z. testified that although the terms of the property settlement allowed Defendant to live at the Residence, that authorization was conditional upon his paying the mortgage and utilities. Because he failed to do so, K.Z. testified, he moved out, and she eventually moved into the Residence. The record is void of any evidence to suggest that Defendant lived at the Residence at the time of any of the incidents at issue, and Defendant presented no evidence to contradict K.Z.'s testimony. *Compare State v. Higginbotham,* 2000-1782 (La. App. 5 Cir. 5/16/01), 790 So.2d 648 (finding that the harassment element of stalking was satisfied by evidence that the defendant, on several occasions, stood near the victim's home and passed her

---

[10] When, as in the case *sub judice*, the stalker's victim is under a protective order, La. R.S. 14:40.2(3) can be used to enhance the defendant's sentence. That provision reads:

> Any person who commits the offense of stalking against a person for whose benefit a protective order, a temporary restraining order, or any lawful order prohibiting contact with the victim issued by a judge or magistrate is in effect in either a civil or criminal proceeding, protecting the victim of the stalking from acts by the offender which otherwise constitute the crime of stalking, shall be punished by imprisonment with or without hard labor for not less than ninety days and not more than two years or fined not more than five thousand dollars, or both.

La. R.S. 14:40.2(3). However, because the district court found that Defendant placed the victim in reasonable fear of death or bodily injury, another enhancement provision, La. R.S. 14:40.2(2)(a), was used to enhance Defendant's sentence.

home in his truck). Accordingly, Defendant's argument that his actions resulted from his habitation at the Residence lacks merit.

Moreover, the record indicates that the only reason for Defendant's presence at the nearby rental properties at issue was to harass and intimidate K.Z. and her children. No evidence was introduced to suggest that there was any need for Defendant to chop down a tree at one of the rental properties, or to release goats onto that property's yard. *Contrast State v. Young*, 96-2079 (La. App. 1 Cir. 5/15/98), 712 So.2d 273 (finding that where the defendant, a pro se litigant, was repeatedly present in a judge's courtroom when his matter was not on the docket and repeatedly called the judge's chambers, the evidence was not sufficient to support the defendant's stalking conviction). The argument that some of the incidents at issue resulted from Defendant's joint ownership of the rental properties lacks merit. The district court's decision not to discount the events occurring at the Residence or the nearby rental properties was well supported by the evidence.[11]

Regarding Defendant's allegation that one of the incidents at issue was based on his lawful presence in a public street, the record evidences that Defendant knew that he was not allowed to come within 100 yards of K.Z. or the rental property locations identified in the Order. Defendant blocked K.Z.'s car, which was only about fifteen feet from the Residence where K.Z. was present, with his van. Viewing the record as a whole, one must conclude that Defendant blocked K.Z.'s car to harass her. This harassment is not somehow exempt from violating La. R.S. 14:40.2(A) because Defendant was on a public street while committing it.

---

[11] *Compare St. Fort v. State*, 943 So.2d 314 (Fla. Dist. Ct. App. 4th Dist. 2006) (stating that the purpose of a stalking statute is to "criminalize conduct that falls short of assault or battery").

Viewing the evidence in the light most favorable to the prosecution, the evidence was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt.

Defendant further argues that the evidence was insufficient to prove that the victim was placed in fear of death or bodily injury as defined by La. R.S. 14:40.2(2)(a), which reads:

> (2)(a) Any person who commits the offense of stalking and who is found by the trier of fact, whether the jury at a jury trial, the judge in a bench trial, or the judge at a sentencing hearing following a jury trial, beyond a reasonable doubt to have placed the victim of the stalking in fear of death or bodily injury by the actual use of or the defendant's having in his possession during the instances which make up the crime of stalking a dangerous weapon or is found beyond a reasonable doubt to have placed the victim in reasonable fear of death or bodily injury, shall be imprisoned for not less than one year nor more than five years, with or without hard labor, without benefit of probation, parole, or suspension of sentence and may be fined one thousand dollars, or both. Whether or not the defendant's use of or his possession of the dangerous weapon is a crime or, if a crime, whether or not he is charged for that offense separately or in addition to the crime of stalking shall have no bearing or relevance as to the enhanced sentence under the provisions of this Paragraph.

The trier of fact has the discretion to accept or reject, either partially or wholly, the testimony of any witnesses, including that given by the victim of a crime. *State v. DeBarge*, 2016-437, p. 26 (La. App. 3 Cir. 12/28/16), 210 So.3d 377, 394 (citing *State v. Schexnaider*, 2003-144, p. 9 (La. App. 3 Cir. 6/4/03), 852 So.2d 450, 457). In *State v. DeBarge*, the victim testified that she was in fear of death or serious bodily injury, cited to several past incidents that led her to that belief, and had sought a protective order as a result of the defendant's conduct. *Id.* Moreover, another witness testified that they also believed that the *DeBarge* defendant would kill his victim, should he be released from jail. *Id.* There, the

Third Circuit found that the district court did not err in finding that the victim was in reasonable fear of death or bodily injury.

Likewise, in the case *sub judice*, the district court did not err in finding that K.Z. was in reasonable fear of death or bodily injury. K.Z. testified that Defendant threatened to kill her when she filed for divorce, attacked her with a tire iron while she was leaving a business transaction, and continued to violate the Order despite multiple arrests for the violations and multiple admonitions from the district court. The record evidences how deeply afraid K.Z. was of Defendant, and what a visceral response she had to his presence, due to Defendant's repeated harassment. Moreover, K.Z.'s tenant moved out of one of the rental properties after being forced to call the police several times because she was afraid of Defendant. Accordingly, the evidence proves beyond a reasonable doubt that Defendant placed K.Z. in reasonable fear of death or great bodily injury. This assignment of error lacks merit.

Defendant next argues that he was prejudiced by the admission of evidence relating to the July 25, 2012 tire iron attack he perpetrated against K.Z., arguing that the evidence's probative value was substantially outweighed by its prejudicial effect. *See* La. C.E. art 403. This Court previously ruled on the admissibility of this evidence in *State v. Zeitoun*, unpub., 2015-0580 (La. App. 4 Cir. 6/1/15). When ruling on that writ application, this Court stated:

> The probative value of this evidence outweighs any prejudicial effect it would have on the defendant. These prior acts give context to the relationship of the defendant and the victim and are highly probative to show that the defendant intended to place the victim in reasonable fear of death or great bodily harm. Further, the jurisprudence establishes that the prior acquittal of the defendant for incidents D and E does not preclude evidence of these as being admitted in the present case. *See Dowling v. U.S.*, 493 U.S. 342 (1990); *State v. Cotton*, 2000-0850 (La. 1/29/01), 778 So.2d 569.

Zeitoun, 2015-0580 at pp. 2-3.

The fact that this Court has previously ruled on this issue implicates the law of the case doctrine. "The law of the case doctrine requires that, as a general rule, appellate courts refuse to reconsider their own rulings on a subsequent appeal of the same case." *State v. Garrison*, 2016-0257, p. 6 (La. App. 4 Cir. 3/29/17), 215 So.3d 333, 337 (citations omitted). Unless the defendant produces new evidence showing that the prior ruling was patently erroneous and produced an unjust result, an appellate court will not reverse its prior rulings. *State v. Golden*, 2011-0735, p. 13 (La. App. 4 Cir. 5/23/12), 95 So.3d 522, 531. The doctrine applies to all prior rulings or decisions of an appellate court or the Supreme Court in the same case, not merely those arising from the full appeal process. *Garrison,* 2016-0257 at p.6, 215 So.3d at 337 (quoting *State v. McElveen*, 2010-0172, p. 13, n.8 (La. App. 4 Cir. 9/28/11), 73 So.3d 1033, 1054 (citations omitted)).

In the case *sub judice*, Defendant has produced no new evidence to suggest that this Court's prior analysis of the admissibility of the July 25, 2012 attack was patently erroneous and produced an unjust result. As this Court previously stated, "[w]hen intent is 'an essential ingredient of the crime charged, it is proper to admit proof of similar but disconnected crimes to show the intent with which the act charged was committed.'" *Zeitoun,* 2015-0580 at p. 2 (citing *State v. Jackson*, 625 So.2d 146, 150 (La. 1993)). This assignment of error lacks merit.

Next, Defendant argues that the case should be remanded for resentencing because he was sentenced immediately following the denial of his motion for new trial. He argues that his immediate sentencing contravened La. C.Cr.P. art. 873, which provides:

> If a defendant is convicted of a felony, at least three days shall elapse between conviction and sentence. If a motion for a new trial, or in arrest of judgment, is filed, sentence shall not be imposed until at least twenty-four hours after the motion is overruled. If the defendant expressly waives a delay provided for in this article or pleads guilty, sentence may be imposed immediately.

Although Defendant argues that he did not waive the statutory delay, the transcript reflects otherwise. The record indicates that Defendant's counsel stated "[a]t this time, the defendant would waive sentencing delays. We're ready for sentencing." Accordingly, this assignment of error lacks merit.

Lastly, Defendant assigns two errors related to his sentence. First, Defendant argues that the district court failed to comply with the sentencing guidelines expressed in La. C.Cr.P. art. 894.1(C), which require that "[t]he court shall state for the record the considerations taken into account and the factual basis therefor in imposing sentence." Next, Defendant argues that his sentence is excessive.

La. C.Cr.P. art. 881.1(E) sets limits on appellate review of sentences where, as in the case *sub judice*, a defendant fails to file a motion to reconsider sentence at the district court. La. C.Cr.P. art. 881.1(E) reads, in pertinent part:

> A. (1) Within thirty days following the imposition of sentence … the defendant may make or file a motion to reconsider sentence.
>
> (2) The motion … shall set forth the specific grounds on which the motion is based…
>
> E. Failure to make or file a motion to reconsider sentence … shall preclude … the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review.

Accordingly, when a defendant fails to file a La. C.Cr.P. art. 881.1 motion to reconsider sentence, an appellate court's review of the sentence is limited to a bare review for constitutional excessiveness. *State v. Mims*, 619 So.2d 1059, 1060 (La.

1993).[12] Defendant's failure to file a motion to reconsider sentence bars him from raising the district court's failure to follow the La. C.Cr.P. art. 894.1(C) requirement on appeal, and renders this assignment of error without merit.

Turning to Defendant's constitutional excessiveness assignment of error, Louisiana Constitution of 1974, art. I, § 20 provides that "[n]o law shall subject any person to ... excessive ... punishment." A sentence is unconstitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, or is nothing more than a purposeless imposition of pain and suffering that is grossly out of proportion to the severity of the crime. *State v. Ambeau*, 2008-1191, p. 9 (La. App. 4 Cir. 2/11/09), 6 So.3d 215, 221. A sentence is grossly out of proportion to the seriousness of the crime if, when the crime and punishment are considered in light of the harm done to society; it shocks the sense of justice. *State v. Vargas-Alcerreca*, 2012-1070, p. 25 (La. App. 4 Cir. 10/2/13), 126 So.3d 569.

Defendant's sentence of four years falls within the one to five year statutory limit set by La. R.S. 14:40.2(A)(2). Although a sentence falls within the statutory limits, it can be reviewed for constitutional excessiveness. *State v. Dauzart*, 2011-0688, p. 12 (La. App. 4 Cir. 3/21/12); 89 So.3d 1214, 1222 (citations omitted). The penalties provided by the Legislature, however, "reflect the degree to which criminal conduct is an affront to society." *State v. Jones*, 2015-0956, p. 28 (La. App. 4 Cir. 3/22/17), 214 So.3d 124, 144; *see also* La. C.C. art. 2 (stating,

---

[12] *Contrast State v. Hulbert,* 2003-1149, pp. 2-3 (La. App. 4 Cir. 8/20/03), 852 So.2d 1245, 1247 (finding that where a defendant failed to object to his sentence and failed to file a motion to reconsider sentence, he was barred from raising any challenge to his sentence on appeal, including constitutional excessiveness). As discussed *supra*, in the case *sub judice,* Defendant objected to his sentence, but failed to file a motion to reconsider sentence.

"[l]egislation is the solemn expression of legislative will"). Sentences that are within the authorized statutory range are thus entitled to great deference. *Jones,* 2015-0956 at pp. 28-29, 214 So.3d at 144.

The district court has broad sentencing discretion, and a sentence will not be set aside for excessiveness absent an abuse of that discretion. *State v. Wells*, 2011-0744, p. 28 (La. App. 4 Cir. 4/13/16), 191 So.3d 1127, 1147 (citations omitted). When reviewing a sentence for excessiveness, appellate courts begin by determining whether the district court has adequately considered the sentencing factors set forth by La. C.Cr.P. art. 894.1. Defendant's motion for new trial and sentencing hearing took place on the same day. As Defendant asserted in his barred assignment of error, the district court did not state for the record the considerations taken into account and the factual basis for the sentence it imposed when it sentenced Defendant. However, the district court, who presided over Defendant's bench trial, reiterated the evidence that it heard when ruling on Defendant's motion for new trial in that same hearing. In so ruling, the district court stated that the offense involved multiple incidents, *see* La. C.Cr.P. art. 894.1(B)(11), that Defendant had persistently been involved in similar offenses, *see* La. C.Cr.P. art. 894.1(B)(12), that Defendant had committed some of the relevant incidents at the victim's place of employment, *see* La. C.Cr.P. art. 894.1(B)(9), and that the victim had been placed in reasonable fear of death or great bodily injury. Considering that Defendant is barred from challenging the district court's failure to state these considerations for the record as to the sentence on appeal, and further considering that the sentencing factors the district court considered are identifiable from the face of the record, we cannot find that the district court did not adequately consider the La. C.Cr.P. art. 894.1 factors.

When the reviewing court finds that the district court adequately applied the La. C.Cr.P. art. 894.1 factors, the reviewing court must then determine whether the sentenced imposed is too severe in light of this particular defendant and the circumstances of his case. *State v. Ellis,* 2014-1170, p. 26 (La. App. 4 Cir. 3/2/2016), 190 So.3d 354, 371. Defendant argues that he is deserving of a more lenient sentence because during the nine-month period covered in the amended bill of indictment, there were no allegations of weapons or threats of harm or violence. Given that the indictment was amended due to Defendant's continuing harassment of the victim, that Defendant repeatedly disregarded the district court's admonishments to stop contacting the victim, and that the district court found beyond a reasonable doubt that Defendant placed the victim in reasonable fear of death or bodily injury, the sentence was well-within the district court's discretion. This assignment of error is without merit.

For the reasons stated above, Defendant's conviction and sentence are affirmed.

AFFIRMED